

TODD F. CROWNER
Claimant

STEVEN ESCARENO CONSTRUCTION
Respondent

ALLIED INSURANCE
Insurance Carrier

With regard to issue numbers 2, 3 and 4, listed by claimant on his Application For Review To The Workers Compensation Appeals Board, the Board does not have jurisdiction over the determination of those issues. Unless it is alleged the ALJ exceeded

his jurisdiction, K.S.A. 44-534a limits the Board's jurisdiction to review preliminary hearing orders to specific designated issues. K.S.A. 44-534a identifies those issues as being disputes as to whether the employee suffered an accidental injury; whether the injury arose out of and in the course of the employee's employment; whether notice is given or claim timely made; or whether certain defenses apply. Those issues are considered jurisdictional and subject to review by the Board.¹ The issues contained in claimant's issue numbers 2, 3 and 4 are not issues over which the Board takes jurisdiction on appeal from a preliminary hearing.

K.S.A. 2004 Supp. 44-551 allows an appeal from a preliminary hearing if it is alleged that an administrative law judge exceeded his or her jurisdiction in granting or refusing the benefits requested. As K.S.A. 44-534a gives the ALJ the authority to determine temporary total disability compensation and a claimant's right to medical treatment, any rulings regarding those issues would be within the ALJ's jurisdiction and K.S.A. 2004 Supp. 44-551 would not allow for jurisdiction by the Board on appeal from those determinations.

With regard to issue number 1, however, the Board does find that it has jurisdiction to determine whether claimant suffered an accidental injury which arose out of and in the course of his employment.

On November 1, 2004, while working for respondent, claimant stepped off a ladder, losing his balance and falling. The fact that claimant suffered some type of accident on that date is not disputed in this record. The defenses raised by respondent are not so much whether that incident occurred, but whether there was any type of injury associated with that incident. Claimant did not immediately seek medical treatment from respondent. The ALJ in his Order determined that claimant had failed to sustain his burden of proving that he suffered a work-related injury while working for respondent. The Board concurs. The ALJ in reaching that determination questioned the histories given by claimant to different individuals as to how he was injured. The Board, in reviewing the various documents stipulated into the record by the parties, agrees with the ALJ's analysis. Claimant went to Wesley Medical Center's emergency room on November 16, 2004. At that time, he was complaining of back pain, but could detail no specific injury. There is no mention of a work-related connection to his injury. When claimant returned to Wesley Medical Center on November 22, he still suffered back pain, but discussed a fall from a ladder which occurred approximately seven weeks before the examination. That would have placed the injury sometime around the first of October. When claimant returned to Wesley Medical Center on December 6, he again complained of low back pain. At this time, he was discussing an injury which occurred at work approximately eight weeks before, which would again put the injury sometime in the first to the middle part of October. Claimant also advised that he had suffered a fall six to seven weeks before, with no immediate pain.

¹ K.S.A. 44-534a(a)(2).

When examined at the Hunter Health Clinic on January 24, 2005, claimant complained of low back pain and bilateral leg pain. He discussed a fall on November 1 from a ladder at work.

When examined by Pedro A. Murati, M.D., on January 26, 2005, claimant also discussed the fall on November 1, 2004, but described to Dr. Murati an immediate onset of back pain. Claimant had not mentioned an immediate onset of pain in the prior medical records. In claimant's statement to Theresa Thomssen,² which was stipulated into evidence, claimant discussed the fall from the ladder and described pain in his leg and his foot. This statement was taken December 8, 2004. Claimant also commented in that statement that he did not start experiencing pain until a couple of weeks after the ladder incident. He told Ms. Thomssen that he had "got to go to work one, one Monday and my back was really hurting and uh, I didn't think nothing of it I just continued to work the rest of the week" ³ Claimant was asked if he just woke up on Monday morning and his back hurt, and he stated "right" and went on to state that he had not done "anything as far as lifting or heavy work or anything like that" during the weekend. He was unable to explain why he was suffering the pain.

The Board acknowledges that when claimant went to Ron Cody, D.C., his own chiropractor, on November 9, he gave a history of falling off a ladder. However, the Board is concerned by the various histories provided to the different health care providers, as well as the conflicts contained in the statement provided to Ms. Thomssen, when compared to claimant's testimony at his deposition on January 28, 2005. From this record, it appears as though claimant suffered a fall on November 1, 2004, but from that point forward, claimant's comments and testimony vary tremendously to the point where the credibility of claimant's testimony is placed into question. The Board, as did the ALJ, determines that claimant has failed to sustain his burden of proving that he suffered a work-related injury while working for respondent. The denial of benefits by the ALJ is, therefore, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated June 8, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

² Theresa Thompson is an insurance adjuster for Allied Insurance.

³ Claimant's recorded Statement (taken by Theresa Thomssen on December 8, 2004) at 5.

Dated this ____ day of October, 2005.

BOARD MEMBER

c: R. Todd King, Attorney for Claimant
Richard J. Liby, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director